

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of the Judge
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Present:

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Muhammad Osman Ali Hadi.

HCAs No.211, 212, 213 and 214 of 2024

Shabbir Ahmed & another Appellants

Vs.

M/s JS Global Capital Ltd. Respondent.

18.03.2025.

Mr. Wasif Riaz, advocate for Appellant.

Mr. Akram Javed, advocate for respondent.

O R D E R

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MUHAMMAD IQBAL KALHORO J: Respondent, JS Global Capital Ltd., filed four different suits against appellants/defendants, who have filed these four separate appeals against impugned order dated 09.03.2024 dismissing applications u/o VII rule 10 CPC for return of plaints to be filed at Lahore, for recovery of certain amount with late payment charges in the year 2011.

2. After the service, the appellants filed their respective written statements in suits incorporating therein counter claim for adjudication. While the suits were pending before learned Single Judge of this court on original side each appellant filed an application u/o VII rule 10 CPC in the relevant suit for return of plaint to be filed at Lahore mainly on the grounds, among others, that appellants are residents of Lahore, have all along lived there, sub offices of respondent/plaintiff are situated at Lahore and Islamabad; accounts opening forms were signed at Lahore; relevant declarations were submitted at Lahore in presence of witnesses under subsection 3 of Zakat & Ushar Ordinance, 1980, cause of action accrued to the plaintiff to file suit at Lahore, therefore, in terms of section 16 to 20 CPC, the plaint shall be returned to the plaintiff/respondent to be filed at Lahore. All the four applications have been decided by learned Single Judge through common order impugned here.

3. Learned counsel for appellants during course of arguments has reiterated the same facts and grounds which he had already raised before learned Single Judge unsuccessfully. In addition, he has emphasized that in terms of section 20 of CPC sub clause "a", the suit is to be filed where defendant(s) at the time of commencement of suit actually and voluntarily resides or carries on business etc; or in terms of clause "b", any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or

carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution or in terms of clause "c" the court within whose territorial jurisdiction the cause of action wholly or in part arises has the jurisdiction to try the case. Learned counsel for appellants submits that learned Single Judge has dismissed the application by considering only clause "c" of section 20 CPC and has ignored clause "a" and "b" which speak of, among others, residence of defendant as a relevant place for filing the suit at.

4. On the other hand, learned counsel for respondent has supported the impugned order and has drawn our attention to para 8 of the counter claim made by appellants in their written statement admitting themselves territorial jurisdiction of this court.

5. We have heard the parties and perused material available on record. In our view, three clauses viz. a, b and c of section 20 CPC are not mutually exclusive to one and other. It is not the scheme of section 20 CPC that in the cases where clause "a" is attracted, clause "b" and "c" would be excluded or in case clause "b" or "c" are attracted, clause "a" would be excluded and rendered irrelevant. A joint reading of clauses "a", "b" and "c" of section 20 CPC depicts that the plot thereunder is inclusive implying that if any of the provisions is attracted; the plaintiff would have an option to take its benefit and file the suit accordingly. The three clauses are mutually beneficial to each other and provide to the plaintiff an opportunity to file the suit at either of the places transcribed thereunder. This could be a place where defendant (s) either resides, carries on business or personally works for gain. But in case, he resides at place "a", carries on business at place "b" and personally works for gain at place "c", then plaintiff will have liberty to file suit at either place. The defendant cannot question maintainability of the suit on the ground that since he/she is living /residing at place "a", the plaintiff cannot file the suit at place "b", where he/she carries on business, because as observed above the proposition under section 20 CPC is not mutually exclusive or destructive, but inclusive, accommodative and beneficial.

6. The plaintiff U/s 20 CPC has also been given a choice / option to file the suit, apart from above said places, at the place where the cause of action wholly or in part has arisen in terms of clause "c" of section 20 CPC. Learned Single judge while taking into consideration the facts of the case has concluded that the cause of action has partially arisen at Karachi. In this regard, he has referred to the fact that Equity Trading Accounts were opened at Karachi, head office of the plaintiff/respondent is situated at Karachi, transactions which earned money in favour of defendants took place at Karachi, the said moneys were credited and debited to the

accounts of appellants from the account of respondent/plaintiff at Karachi. Besides, the fact that each of the accounts of the appellants reflecting the amount earned or paid out were maintained at Karachi has been considered indicative of the fact that each portion of liability that occurred on each individual transaction happened at Karachi. Learned counsel for appellants has failed to refer to any material neutering such relevant observations or that the same are based on erroneous appreciation of relevant facts, or influenced by misinterpretation of the relevant laws, except emphasizing that appellants are permanent residents of Lahore.

7. Apart from above, we have seen that in para 17 of the plaint respondent in clear words has referred to the jurisdiction of the Courts at Karachi by stating that appellant's Equity Trading Account and CDC sub account are maintained at Karachi, the transactions of sale and purchase of shares were effectuated at Karachi, the payments were made by the appellants at Karachi, deliveries of shares purchased were made at Karachi and transactions were executed at Karachi Stock Exchange Ltd. It is a well settled proposition of law that for deciding an application u/o VII rule 11 CPC, the facts disclosed in the plaint are to be considered true on their face value for the purpose of deciding atleast territorial jurisdiction of the court to adjudicate the matter. All the facts narrated in para 7 of the plaint prima facie show jurisdiction of the court at Karachi in the matter in terms of clause "c" of section 20 CPC. Further, all such pleas are rooted in the facts and thus are to be deciphered through evidence to be presented by the respondent/plaintiff in the suit, which stage has not yet come.

8. In the suit, however, if it turns out that evidence presented by the plaintiff/respondent does not bear the post: claim regarding territorial jurisdiction of the Court at Karachi, or that no transaction took place at Karachi as alleged, then, of course, the plea of the appellants for return of the plaint could be considered. But when nothing has been prima facie substantiated against the claim made by the respondent/plaintiff in para 17, the court will not simply on the basis of the fact that defendants are residing in Lahore, would be influenced and return the plaint overlooking the obvious fact that cause of action to the plaintiff partially, on account of various activities held between the parties, accrued at Karachi.

9. Another fact which appears to be relevant is that appellants while making counter claim in the suit have in para 8 admitted the territorial jurisdiction of the court at Karachi by stating that subject shares were listed in and traded in Karachi Stock Exchange. Further, the plaintiff/respondent failed to act in accordance with appellants/defendants instructions at Karachi and sale of the subject shares in December, 2010 was also caused by the plaintiff /respondent at Karachi. Appellants/defendants trading account and CDC sub account were also

maintained at Karachi. When the appellants in their own written statement, while putting up counter claim, have accepted territorial jurisdiction of the court by mentioning the above facts, their summersault in the shape of application u/o VII rule 11 CPC at later stage cannot be given much credence, not the least when in support of such applications nothing substantial has been brought before the court for excluding a consideration under clause "c" of section 20 CPC, barring the fact that the respondents are residents of Lahore. And particularly when by admitting the fact that certain activities benefiting the appellants had taken place at Karachi, the appellants have sealed the jurisdiction of the court at Karachi.

10. In view of above discussion, we do not find any merits in these appeals and accordingly dismiss them alongwith pending applications.

The Appeals stand disposed of alongwith pending application.

JUDGE

JUDGE

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